

Message Text

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ACTION L-03

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FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC IMMEDIATE 2945

C O N F I D E N T I A L MANAGUA 1833

E.O. 11652: GDS

TAGS: PINT, NU

SUBJECT: LONG HEARINGS II-CHAMORRO

REF: (A) STATE 87965, (B) MANAGUA 1738

SUMMARY: PROHIBITION ON CHAMORRO TRAVEL IS ENTIRELY LEGAL
MATTER IN WHICH PRESIDENT HAS NO LEGAL ROLE. END SUMMARY

1. EMBOFF SPOKE WITH SUPREME COURT JUSTICE DR. RAFAEL DIAZ AND DR. CHAMORRO ABOUT TRAVEL RESTRICTION ON THE LATTER. EXPLANATION OF DR. DIAZ OF CHAMORRO CASE IS THAT HIS FOUR SEPERATE APPEALS WILL BE DULY DECIDED, A JUDGMENT HANDED DOWN THEREBY TERMINATING THE CASE AND CHAMORRO WILL THEN BE FREE TO TRAVEL. HE SAID THAT THE TRAVEL RESTRICTION APPLIES TO PENAL CASES BUT NOT CIVIL CASES. THE IMPLICATION IS THAT EVEN THOUGH DR. HUECK MAY FILE A SUBSEQUENT CIVIL DAMAGES CASE AGAINST CHAMORRO, THIS WOULD NOT ALLOW A NEW TRAVEL INJUNCTION. DR. DIAZ FURTHER REITERATED THE POSITION OF THE PRESIDENT THAT THE PRESIDENT HAS NO STANDING OF ANY KIND IN THE CASE WITH REGARD TO EITHER THE SENTENCE OR THE TRAVEL INJUNCTION. THIS IS IMPOSSIBLE UNDER THE CONSTITUTIONAL SEPERATION OF POWERS.

2. CHAMORRO ON THE OTHER HAND, REFERS TO THE PRESIDENT'S
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POSITION THAT HE HAS NO STANDING IN THE CASE AS QUOTE PSEUDO
LEGAL UNQUOTE. BY THIS CAMORRO APPARENTLY MEANS THE
POSITION IS COMPLETELY LEGAL BUT DOES NOT REFLECT POLITICAL
REALITIES. HE ACKNOWLEDGES THAT THE ISSUE OF LIFTING THE TRAVEL
INJUNCTION IS PURELY A MATTER FOR THE SUPREME COURT TO DECIDE
AND HIS LAWYERS HAVE PETITIONED THE COURT TO DO SO. HOW-
EVER, CHAMORRO APPARENTLY BELIEVES THAT IF THE PRESIDENT

HAD DECIDED THAT IT WAS IN HIS INTEREST FOR CHAMORRO TO TRAVEL, THE COURT WOULD HAVE ALREADY ACTED FAVORABLY ON THE PETITION. CHAMORRO'S COMPLAINT AGAINST THE TRAVEL RESTRICTION IS THEREFORE A POLITICAL PERCEPTION, NOT A LEGAL ARGUMENT.

3. EMB REGRETS THE CONFUSION OVER PARA 5 OF REFTTEL B. THE CHAMORRO FAMILY LETTER TO THE PRESIDENT DEALT WITH THE POSSIBLE EVENTUAL OUTCOME OF THE CASE IN WHICH LA PRENSA COULD BE BANKRUPT AND SERVING NOTICE ON THE PRESIDENT HE WOULD BE HELD RESPONSIBLE. IT DID NOT DEAL SPECIFICALLY WITH THE TRAVEL INJUNCTION AND WAS FUNDAMENTALLY A POLITICAL, RATHER THAN LEGAL, APPROACH. IT DID, HOWEVER, REFER TO CONSTITUTIONAL ARTICLE 192 WHICH GIVES THE PRESIDENT POWER TO INITIATE CORRECTIVE ACTION IF MEMBERS OF THE JUDICIAL BRANCH ACT QUOTE CONTRARY TO THE PROPER EXERCISE OF JUDICIAL DUTIES UNQUOTE.

4. TO SPECIFICALLY RESPOND TO QUESTION ASKED TO DEPT., SOMOZA DOES NOT HAVE LEGAL POWER TO OVERTURN OR SUSPEND FOR ANY PERIOD OF TIME THE TRAVEL INJUNCTION.

5. COMMENT: TO DENY THAT PRESIDENT HAS POWER TO INFLUENCE OUTCOME OF LEGAL PROCEEDINGS WOULD BE TO DENY POLITICAL REALITIES. HOWEVER, THE PRESIDENT IS ON SOLID LEGAL GROUND IN DENYING HE HAS THE POWER TO INTERFERE WITH REGARD TO THE CASE IN GENERAL, OR THE TRAVEL INJUNCTION IN PARTICULAR. SEPTTEL FOLLOWS REPORTING ON CHAMORRO'S REMARKS REGARDING THE STATEMENT HE HAS SENT TO MR. KOCH AND EMB EVALUATION OF CHAMORRO'S ROLE IN THE HEARINGS.
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